

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

DELPHI CORPORATION, et. al.,

Debtors

Case No.: 05-44481 (RDD)

Chapter 11

(Jointly Administered)

RESPONSE OF SUNRISE MEDICAL, INC. TO DEBTORS'  
THIRD OMNIBUS OBJECTION

Pursuant to Notice of Objection to Claim dated October 31, 2006, Sunrise Medical, Inc. ("Sunrise") respectfully submits its response to the Debtor's Objection to Sunrise's Claim No. 14176 as follows:

On July 31, 2006, Sunrise filed what it categorized as a "provisional proof of claim" based upon a Development and Supply Agreement ("D&S Agreement") dated January 24, 2004 by and between Sunrise and Debtor, Delphi Medical Systems Corp. ("Delphi"), a Delaware corporation.

The D&S Agreement is scheduled by the Debtors as an executory contract and, to date, the D&S Agreement has neither been assumed nor rejected.

Delphi has in its Third Omnibus Claims Objection objected to Sunrise's Claim No. 14176 as an "Unsubstantiated Claim."

Sunrise and Delphi, subject to Court approval, have agreed as follows:

As to Sunrise's claim filed as a provisional claim for future damages that may result from rejection of executory contracts, should rejection occur pursuant to 11 U.S.C. 365(a), Sunrise, by filing Claim No. 14176 and entry of the Court's Order approving Delphi's objection, the Court's

Order is without prejudice to Sunrise's rights under Paragraph 8 of the Order under 11 U.S.C. §§ 107(b), 501, 502, 1111(a), Fed. R. Bankr. P. 1009, 2002(a)(7), 3002(c)(4), 3003(c)(3) and 5005(a) Establishing Bar Dates For Filing Proofs Of Claim And Approving Form And Manner Of Notice Thereof dated April 12, 2006 (Docket No. 3206). Entry of the Court's Order is further without prejudice to Sunrise's rights of set-off and/or recoupment, if any, that may arise out of the D&S Agreement and without prejudice to Delphi's rights to contest any such rejection claim or Delphi's rights under 11 U.S.C. § 365.

Sunrise and Delphi will reduce to stipulation the terms of the parties' agreement.

DATED: November 22, 2006

PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP

By: /s/ Philip J. Giacinti, Jr.  
Philip J. Giacinti, Jr. (Bar No. 065909)  
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Attorneys for Creditor, Sunrise Medical, Inc.

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On November 22, 2006, I served the within documents:

**RESPONSE OF SUNRISE MEDICAL, INC. TO DEBTORS' THIRD OMNIBUS  
OBJECTION**

- ☐ by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission confirmation report is attached hereto.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☒ by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ (*State*) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☒ (*Federal*) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 22, 2006, at San Diego, California.

/s/ Christine A. Waltman  
Christine A. Waltman

**SERVICE LIST**

Honorable Robert D. Drain  
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